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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER	
GILBERT, WILLIAM V	

ART UNIT	PAPER NUMBER
3635	

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05/23/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/787,429	RIPPOLONE, JOSEPH D.	
	Examiner	Art Unit	
	William V. Gilbert	3635	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *19 February 2008*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *2,3,5-10 and 12-16* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *2,3,5-10, 12-16* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

This is a Final Office Action. Claims 1, 4 and 11 are cancelled. Claims 2, 3, 5-10 and 12-16 are examined.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless -
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 2 and 12-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Bortugno (U.S. Patent No. 5,503,219) as in the action dated 16 November 2007.

Independent Claim 12: Bortugno discloses a gutter section having a gutter section with a liquid passage (see "A" from attached Fig. 5 from Bortugno below) an air flow passage ("B" below), a gutter wall having a continuous cross section, separating the liquid passage and the air flow passage, the gutter wall has two spaced apart side walls (16) and a bottom wall (23) that define the liquid passage, and the air flow passage extends through the bottom wall (see portion 29 that

extends through the bottom wall 23.) Applicant should respectfully note that the limitation "molded" line 1 indicates method steps and only the final product, the gutter section, is provided with patentable weight. Per the amendment that the gutter wall has a continuous cross section, please note that the gutter wall includes two spaced apart side walls and a bottom wall that the examiner identifies as portions 16 and 23 from the Bortugno reference. By observing Figures 1 and 2, the walls as shown in the drawings are continuous.

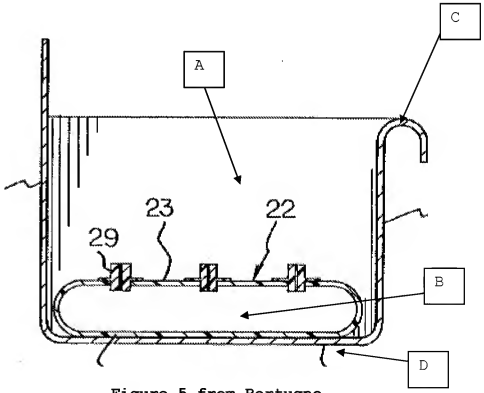

Figure 5 from Bortugno

Claim 2: the air flow passage extends within the bottom wall (see portion 29).

Claim 13: the airflow passage is parallel to the liquid flow passage (see Fig. 5, generally).

Claim 14: the gutter wall is common wall (portion 23) that at least partially defines the liquid passage and the airflow passage.

Claim 15: the gutter wall (portion 16) includes a solid body extending between a continuous upper surface ("C" above) and a continuous lower surface ("D" above).

Claim 16: the air flow passage extends through the solid body (Fig. 2: proximate 17) and is spaced apart from the upper surface and lower surface (the lower surface should be noted as the "exterior portion" and portion 24 spaces the air flow passage from the support and lower surfaces.)

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the

> art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 3, 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bortugno as in the action dated 16 November 2007.

Claims 3, 5 and 6: the prior art of record discloses the claimed invention except that the air flow passage is a multiple of air flow passages. It would have been obvious at the time the invention was made to a person having ordinary skill in the art as a matter of duplication of parts to have this limitation because duplication of parts has no patentable significance unless a new and unexpected result is produced. *In re Harza*, 274 F.2d 669 (CCPA 1960). See MPEP §2144.04. Further while the portions seem linear (as shown in Fig. 2), the prior art of

record does not disclose that the members are non-linear. It would have been obvious at the time the invention was made to a person having ordinary skill in the art as a matter of design choice to have this limitation because a configuration of an invention is a matter of choice that a person of ordinary skill in the art would have found obvious absent persuasive evidence that the particular configuration of the claimed subject matter was significant. *In re Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1966). See MPEP §2144.04.

Claim 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bortugno in view of Bernardi (U.S. Patent No. 3,431,972) as in the action dated 16 November 2007.

Claims 7 and 8: Bortugno discloses a gutter thawing system (Fig. 5) having a gutter section with a liquid passage ("A" above) and an air flow passage ("B" above) and a hot air supply (12). Bortugno does not disclose multiple of air flow passages or a multiple of gutter sections. It would have been obvious at the time the invention was made to a person having ordinary skill in the art as a matter of duplication of parts to have this limitation because duplication of parts has no patentable significance unless a new and unexpected result is produced. *In re Harza*, 274 F.2d 669 (CCPA 1960). See MPEP §2144.04.

Further, Bortugno discloses the air passages as linear, but not nonlinear. It would have been obvious at the time the invention was made to a person having ordinary skill in the art as a matter of design choice to have this limitation because a configuration of an invention is a matter of choice that a person of ordinary skill in the art would have found obvious absent persuasive evidence that the particular configuration of the claimed subject matter was significant. *In re Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1966). See MPEP §2144.04. Further, Bortugno discloses an input connector (27), but not a return connector and the communication of the limitations as claimed. Bernardi discloses a thawing system where the heating unit (Fig. 2) has an input and return (see Fig. 2, generally where the heating system is cyclic as shown, which results in an input and return.) It would have been obvious at the time the invention was made to a person having ordinary skill in the art to use the system in Bernardi with the air flow passage in Bortugno because the systems are functionally equivalent and would perform equally as well. The Applicant should respectfully note that the term "molded" relates to a process for making the apparatus and only the final product, the apparatus, is provided patentable weight.

Claims 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bortugno in view of Bernardi as applied to claim 8 above, and further in view of Hamjy (U.S. Patent No. 2,240,851) as in the action dated 16 November 2007.

Claims 9 and 10: the prior art of record discloses the claimed invention except for the use of a manifold and a fan. Hamjy discloses a heating system that uses a manifold system and a fan (page 1, right column, lines 12-40). It would have been obvious at the time the invention was made to a person having ordinary skill in the art to use a manifold and fan in conjunction with the system in Bortugno in view of Bernardi because manifolds are well known in the art for allowing the distribution of air flow in multiple directions and fans are well known in the art for aiding in the increase of air flow. The phrase "to raise a pressure of an airflow from said hot air supply to said manifold to above atmosphere" Claim 10, is a statement of intended use of the claimed invention and must result in a structural difference between the prior art of record and the claimed invention. If the prior art is capable of performing the limitation, then it meets the claim.

Response to Arguments

3. The following addresses applicant's remarks/arguments dated 19 February 2008:

Objection to the Drawings:

Applicant's clarification of the drawings is noted and the objection is withdrawn.

Claim rejection: 35 USC §102(b):

Applicant's amendment to the claim is not persuasive. The examiner respectfully asserts that the prior art of record (Bortugno, cited above) still has the limitations as claimed. See rejection above for explanation.

Claim rejection: 35 USC §103(a):

The examiner respectfully disagrees with applicant's arguments. While it is noted that the "mechanical systems" are different in the prior art of record (Bernardi and Bortugno, both cited above), the examiner asserts that the "hose system" (e.g. Bernardi portion 2 and Bortugno portion 22) function in the same manner and can be interchangeable with each other. As a result, the examiner maintains the position that the combination of the references is obvious to one of ordinary skill in the art at the

time the invention was made. In addition, the examiner notes applicant's citation of MPEP §2143.01(IV) where a rationale must be provided for modifying a reference. However, citing *In re Harza* (see MPEP §2144.04(VI)(B) the mere duplication of parts has no patentable significance unless a new and unexpected result is produced. It is the examiner's position that no new and unexpected result is produced, therefore, the modification of duplicating parts is not a patentable feature for the invention as claimed. As a result, requiring a rationale for modifying a reference is moot because the modification is, under *Harza*, not a patentable feature.

Conclusion

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL.** See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened

statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to William V. Gilbert whose telephone number is 571.272.9055. The examiner can normally be reached on Monday - Friday, 08:00 to 17:00 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on 571.272.6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Richard E. Chilcot/
Supervisory Patent
Examiner, Art Unit 3635

/W. V. G./
Examiner, Art Unit 3635